

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

BEFORE THE
ILLINOIS COMMERCE COMMISSION

ENBRIDGE PIPELINES (ILLINOIS)) DOCKET NO.
L.L.C.) 07-0446
)
Application pursuant to Sections)
8-503, 8-509 and 15-401 of the)
Public Utilities Act - the Common)
Carrier by Pipeline Law to)
Construct and Operate a Petroleum)
Pipeline and when necessary, to)
take private property as provided)
by the Law of Eminent domain.)

Springfield, Illinois
Tuesday, January 8, 2008

Met, pursuant to notice, at 1:30 p.m.

BEFORE:

MR. LARRY JONES, Administrative Law Judge

APPEARANCES:

MR. GERALD A. AMBROSE
MR. G. DARRYL REED
SIDLEY AUSTIN, LLP
One South Dearborn
Chicago, Illinois 60603
Ph. (312) 853-7000

(Appearing on behalf of
Applicant)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Ln. #084-002710

1 APPEARANCES: (Continued)

2 MR. JOEL W. KANVIK
3 Senior Counsel
4 1100 Louisiana, Suite 3300
Houston, Texas 77002-5217
Ph. (713) 821-2000

5 (Appearing on behalf of
6 Applicant)

7 MS. JANIS VON QUALEN
8 MR. JAMES V. OLIVERO
9 Office of General Counsel
527 East Capitol Avenue
Springfield, Illinois 62701
Ph. (217) 785-3808

10 (Appearing on behalf of Staff of
11 the Illinois Commerce
Commission)

12 MR. ANDREW HOLSTINE
13 THE WOCHNER LAW FIRM
14 707 Skokie Boulevard, Suite 500
Northbrook, Illinois 60062
Ph. (847) 272-7360

15 (Appearing on behalf of
16 Intervenors via teleconference)

17 MR. THOMAS J. PLIURA
18 LAW OFFICES OF THOMAS J. PLIURA
19 P.O. Box 130
LeRoy, Illinois 61752
Ph. (309) 962-2299

20 (Appearing on behalf of
21 Intervenors via teleconference)

22

1 APPEARANCES: (Continued)

2 MR. JON ROBINSON
3 BOLEN, ROBINSON & ELLIS, LLP
4 202 South Franklin Street, 2nd Floor
Decatur, Illinois 62523
Ph. (217) 429-4296

5 (Appearing on behalf of
6 Intervenors via teleconference)

7 MR. SCOTT C. HELMHOLZ
8 MR. ELIOTT M. HEDIN
BROWN, HAY & STEPHENS, LLP
205 South Fifth Street, Suite 700
Springfield, Illinois 62705
Ph. (217) 544-8491

10 (Appearing on behalf of
11 Intervenor Oelze Equipment
Company and Shelby Coal
Holdings, et al.)

12 MR. ERIC RUUB
13 1115 East Washington Street, Suite 401
Post Office Box 2400
14 Bloomington, Illinois 61702-2400
Ph. (309) 888-5110

15 (Appearing on behalf of
16 Intervenors via teleconference)

17 MR. MERCER TURNER
Attorney at law
18 202 North Prospect Road
Bloomington, Illinois 61704
19 Ph. (309) 662-3078

20 (Appearing on behalf of
21 Intervenors Pleasant Murphy, et
al. via teleconference)

22

1 APPEARANCES: (Continued)

2 MR. JAMES R. MYERS
3 LEFEVRE, OLDFIELD, MYERS, APKE & PAYNE LAW GROUP,
4 LTD.
303 South Seventh Street
Vandalia, Illinois 62471

5 (Appearing on behalf of
6 Intervenor Fayette Water
Company via teleconference)

7 MR. BRIAN GRANAHAHAN
Attorney at Law
8 407 South Dearborn, Suite 701
Chicago, Illinois 60605
9 Ph. # (312) 386-1043

10 (Appearing on behalf of
11 Intervenor Environmental
Illinois Research and Education
12 Center via teleconference)

13 MS. ANN ALEXANDER
Senior Attorney
101 North Wacker Drive, Suite 609
14 Chicago, Illinois 60606

15 (Appearing on behalf of
16 Intervenor Natural Resources
Defense Council via
17 teleconference)

18

19

20

21

22

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	None .				
4					
5					
6					
7					
8					
9					
10					
11					
12					
13	<u>EXHIBITS</u>				
14				<u>MARKED</u>	<u>ADMITTED</u>
15	None .				
17					
18					
19					
20					
21					
22					

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

PROCEEDINGS

JUDGE JONES: Good afternoon. I call for hearing Docket Number 07-0446. This is titled in part Enbridge Pipelines (Illinois), LLC, application pursuant to Sections 8-503, 8-509 and 15-401 of the Public Utilities Act, Common Carrier by Pipeline Law to construct and operate a petroleum pipeline and when necessary to take private property as provided by the law of Eminent Domain.

At this time we will ask the parties to enter your respective appearances orally for the record. As before, if you have entered an appearance previously at one of the hearings, you need not provide your business address and phone number unless you wish to do so today.

All right. Having said that, we will start with appearances to be entered by those who are physically present in the hearing room in Springfield, and among those we will start with counsel for the petitioner.

MR. AMBROSE: On behalf of the applicant Enbridge Pipelines (Illinois), Gerald A. Ambrose and

1 Joel W. Kanvik, and our appearance information is in
2 the record.

3 JUDGE JONES: Thank you. Commission Staff?

4 MS. VON QUALEN: Jan Von Qualen and Jim Olivero
5 on behalf of the Staff witnesses of the Illinois
6 Commerce Commission.

7 JUDGE JONES: Thank you. Other appearances in
8 Springfield?

9 MR. HELMHOLZ: Scott Helmholtz, Your Honor, for
10 Shelby Coal Holdings, et al.

11 JUDGE JONES: Thank you. Are there other
12 appearances to be entered by those physically present
13 in Springfield?

14 MR. HEDIN: Elliott Hedin on behalf of Oelze
15 Equipment Company, LLC, as well as the Shelby Coal
16 Holdings, et al., Intervenors.

17 JUDGE JONES: Thank you. Before I continue, if
18 anyone is having any trouble hearing anyone else, let
19 us know and we will do whatever we need to do to
20 correct that situation.

21 We will now turn to those who are
22 participating by telephone. What I will do is sort

1 of refer to a transcript of a prior hearing so we can
2 kind of go from one to the next.

3 Pliura Intervenors?

4 MR. PLIURA: Yes, this is Tom Pliura, and
5 Pliura Intervenors are here.

6 JUDGE JONES: Thank you. Mercer Turner
7 Intervenors? Let the record show no response, at
8 least at this time.

9 Mr. Healey?

10 Mr. Robinson?

11 Mr. Craig Hedin?

12 Mr. Ruub?

13 MR. RUUB: Yeah, this is Eric Ruud appearing by
14 telephone representing the County of McLean.

15 JUDGE JONES: Thank you. Mr. Myers?

16 MR. MYERS: Is that Myers or Beyers?

17 JUDGE JONES: We will start with Beyers.

18 MR. MYERS: That's not me.

19 JUDGE JONES: Go ahead, Mr. Myers.

20 MR. MYERS: James Myers, Fayette Water Company.

21 JUDGE JONES: Thank you. Are there other
22 appearances to be entered by those who are

1 participating by telephone?

2 MR. GRANAHAH: Yes, Your Honor, this is Brian
3 Granahan from Environmental Illinois Research and
4 Education Center. Last name is G-R-A-N-A-H-A-N. We
5 are at 407 South Dearborn, Suite 701, Chicago,
6 Illinois 60605. Phone number (312) 386-1043.

7 JUDGE JONES: And you filed an intervening
8 petition, correct?

9 MR. GRANAHAH: That's correct.

10 MS. ALEXANDER: And this is Ann Alexander from
11 the National Resources Defense Council, and we are at
12 101 North Wacker Drive, Suite 609, Chicago 60606.

13 JUDGE JONES: Thank you. And you filed an
14 intervening petition on or about December 31,
15 correct?

16 MS. ALEXANDER: I believe so. Someone else
17 filed it.

18 JUDGE JONES: Thank you. Are there other
19 appearances to be entered by those on the phone?

20 MR. REED: Yes, Your Honor, this is G. Darryl
21 Reed of the law firm of Sidley and Austin, LLP, also
22 appearing on the telephone on behalf of applicant

1 Enbridge Pipelines (Illinois), LLC.

2 JUDGE JONES: Thank you. Are there other
3 appearances to be entered by those who are on the
4 phone?

5 MR. HOLSTINE: Yes, Your Honor, this is Andy
6 Holstine. I have previously filed a petition and
7 appeared by phone at prior hearings as an intervening
8 petitioner -- or intervening party.

9 JUDGE JONES: Thank you. Are there other
10 appearances to be entered by those who are on the
11 phone?

12 MR. TURNER: This is Attorney Mercer Turner
13 from Bloomington, Illinois. I have filed petitions
14 for intervention for Pleasant Murphy and several
15 other family farmers in McLean, DeWitt and Macon
16 County, Illinois.

17 JUDGE JONES: Okay, thank you. Are there
18 appearances by others who are on the phone? All
19 right. Let the record show there are not, at least
20 at this time. If any others -- is there an
21 appearance to be entered by someone else on the
22 phone?

1 MR. ROBINSON: Jon Robinson for Intervenors.

2 JUDGE JONES: Thank you. Are there any other
3 appearances to be entered by those on the phone? Let
4 the record show there are not, at least at this time.
5 If others join the call, we will see whether they
6 wish to enter appearances at that time.

7 All right. In terms of further
8 scheduling in this docket, that's a matter that we
9 need to address to some degree today. The last time
10 we met we heard competing scheduling proposals
11 outlined by those who had them to offer. We will
12 probably proceed in a similar manner today. I just
13 have one comment to make prior to asking the parties
14 about that.

15 In terms of pending motions there are
16 pending motions to compel filed by Intervenor Kelly
17 and there are pending motions to compel filed on
18 behalf of Intervenor Pleasant Murphy. With respect
19 to those pending motions to compel, we will just
20 advise the parties that rulings on those motions will
21 be issued this week. So to the extent that is of any
22 benefit to you in outlining your scheduling proposals

1 and comments there is --

2 MR. TURNER: Your Honor, this is Mercer Turner.
3 May I have leave to file today responses? We have a
4 number of responses to my motion to compel, you know,
5 like four or five of them, and I would like to just
6 have one global response to all five of them.

7 JUDGE JONES: No. There were two opportunities
8 provided to make filings on behalf -- by you with
9 respect to that motion, including a reply to
10 responses, but that date has come and gone. And so
11 there will be no dates added to the schedule with
12 respect to that. There was an opportunity in there
13 to file a reply to any responses that were filed by
14 other parties.

15 Moving on to other scheduling matters,
16 I think in the current schedule there is a date in
17 there for Enbridge rebuttal testimony. I realize
18 that date was built into that schedule some time back
19 prior to some other revisions in the scheduling
20 elements that preceded it. But in any event, in
21 terms of further scheduling proposals we will start
22 with counsel for Enbridge and I will ask whether that

1 Enbridge rebuttal date is still a date that is being
2 proposed by Enbridge.

3 MR. AMBROSE: Well, Your Honor --

4 JUDGE JONES: Please identify yourself before
5 you speak, and that would apply to anybody. And I
6 forgot to mention that before, so I will do it now
7 before I forget. Go ahead.

8 MR. AMBROSE: Thank you for the reminder. This
9 is Gerald Ambrose on behalf of Enbridge.

10 Your Honor, we would propose to move
11 that date back by ten days to the 28th in view of the
12 fact, as you indicated, that that date was set before
13 we had the number of Intervenorors we now have and also
14 in view of the fact that we are still receiving
15 testimony being sent in as of this morning. I have a
16 stack in front of me, as you can see. Probably about
17 that much more is available in the computer, but I
18 didn't have a chance to print them out and bring them
19 along.

20 So I would propose that we move the
21 date for us back to the 28th and we would then put in
22 our rebuttal testimony. And I would propose as well

1 that we then schedule hearings on the application on
2 March 6 and 7.

3 MR. TURNER: This is Mercer Turner, Your Honor.

4 JUDGE JONES: Just a minute, we will get to
5 you, Mr. Turner.

6 MR. TURNER: When you say the 28th, what month
7 are you referring to?

8 MR. AMBROSE: January.

9 JUDGE JONES: All right. Mr. Ambrose has
10 outlined Enbridge's scheduling proposal. I realize
11 that other parties may have comments about that
12 proposal and counsel for Enbridge may have some
13 comments about other parties' proposals as well as
14 its own. So what I am going to do next is to see if
15 Staff or the other parties have any scheduling
16 proposals to offer today.

17 I will ask you to hold off on any of
18 your reasons for advancing the proposals that you are
19 identifying at this point in the hearing. I want to
20 see what we really have in the way of scheduling
21 proposals identified first before we get to taking
22 any argument with respect to any of them. So we will

1 make sure everybody has --

2 MR. TURNER: Your Honor --

3 JUDGE JONES: Excuse me, you are going to have

4 to -- was that you, Mr. Turner?

5 MR. TURNER: Yes.

6 JUDGE JONES: You are going to have to wait

7 until I actually ask if there are such proposals

8 ready to be offered. Thank you.

9 MR. TURNER: Excuse me. Excuse me, Your Honor.

10 JUDGE JONES: No problem.

11 So, as noted, to the extent parties

12 have comments or arguments to make for or against any

13 of the proposals that they have heard, be it their

14 own or someone else's, you will get the opportunity

15 to do that and we will make sure that everyone in

16 Springfield and on the phone has an opportunity to

17 speak to the schedule.

18 So having said that, we have heard

19 from Mr. Ambrose on behalf of Enbridge. At this time

20 does the Commission Staff have any schedule proposal

21 to make?

22 MS. VON QUALEN: Yes, this is Jan Von Qualen

1 for Staff. Staff would propose if the Company is
2 going to file rebuttal testimony on January 28 --

3 UNIDENTIFIED SPEAKER: Sorry, we cannot hear.

4 MS. VON QUALEN: Is that better?

5 UNIDENTIFIED SPEAKER: Yes, thank you.

6 MS. VON QUALEN: This is Jan Von Qualen for
7 Staff. And Staff would propose that if the Company
8 is going to file rebuttal testimony on January 28,
9 that Staff and Intervenor testimony be scheduled for
10 filing on the week of March 31, either maybe the
11 first or second of April. And then we don't have a
12 proposal for Staff -- or for Company surrebuttal
13 testimony. That would be according to what the
14 Company thought they needed for that. But at this
15 point it appears that there will be need for another
16 round of testimony, at least from Staff's
17 perspective.

18 JUDGE JONES: Let me ask you a clarifying
19 question, and again we will get to other parties on
20 your views here. But before we do, one clarifying
21 question, when you say Staff and Intervenor testimony
22 on the week of March 31, is that in response to

1 Company rebuttal and in response to each other or are
2 you suggesting something else?

3 MS. VON QUALEN: No, I failed to address that.
4 But, yes, it would be in response to Company rebuttal
5 and other direct testimony filed by Staff or
6 Intervenors.

7 JUDGE JONES: All right. Again, under your
8 proposal you mentioned Company surrebuttal testimony.
9 Did you put out a date for that or were you at this
10 point?

11 MS. VON QUALEN: I did not put out a date for
12 that. I would leave that to the Company's
13 discretion.

14 JUDGE JONES: But in any event under the
15 schedule that you are outlining, the surrebuttal date
16 would be to respond to anything filed the week of
17 March 31?

18 MS. VON QUALEN: Yes.

19 JUDGE JONES: All right. Staff has outlined
20 its view of the scheduling world here. Do other
21 parties have any clarifying questions about how that
22 Staff schedule works or how the Enbridge schedule

1 works before we proceed any further with any
2 proposals from anybody else? Does anybody have any
3 questions about how those schedules work?

4 MR. GRANAHAH: Your Honor, this is Brian
5 Granahan from Environment Illinois Research and
6 Education Center. On the Enbridge proposal was there
7 a date for supplemental direct testimony from
8 Intervenors and Staff?

9 MR. AMBROSE: Could you repeat that, please?
10 We didn't quite hear it.

11 MR. GRANAHAH: Sure, sorry about that. This is
12 Brian Granahan from Environment Illinois Research and
13 Education Center. Now, on the Enbridge proposal
14 there is a date for Enbridge's rebuttal testimony to
15 be due on the 28th of January, with hearings on March
16 6 and 7, correct?

17 MR. AMBROSE: Correct.

18 MR. GRANAHAH: And I know the order of December
19 31 contemplated also supplemental testimony from
20 Intervenors and Staff in response to Enbridge's
21 rebuttal testimony. Is there a date by which that
22 testimony would be due from Intervenors and Staff?

1 MR. AMBROSE: I will defer to the judge, but
2 that was not my understanding of the order.

3 JUDGE JONES: Right. I am not going to get
4 into too much detail with regard to the ruling that
5 spoke to supplemental testimony, but I think that the
6 parties will have to refer to that ruling itself to
7 see what it says. The supplemental testimony is
8 something that may be provided in the event that
9 certain of the motions to compel are granted. That
10 is what the supplemental testimony filing went to.
11 Any reference in any ruling to supplemental testimony
12 does not say anything with reference to responding to
13 intervenor rebuttal or anything like that.

14 Having said that, is there a question
15 for Mr. Ambrose with respect to how the schedule that
16 he outlined works?

17 MR. GRANAHAHAN: Not from me, Your Honor. That
18 was my only point of clarification.

19 JUDGE JONES: Thank you. All right. We have
20 the Enbridge scheduling proposal outlined on the
21 record, along with the Staff proposal. And again,
22 without getting into any arguments for or against

1 those two proposals or any other, I want to give
2 other parties a chance at this time to say whether
3 they have any scheduling proposals to put forward.

4 So let's start with those physically
5 present in Springfield and then we will move to those
6 who are on the phone. Do any parties in Springfield
7 have any competing scheduling proposals to put
8 forward?

9 MR. HELMHOLZ: Judge, this is Scott Helmholtz
10 for the Intervenor Shelby Coal Holding, et al. I am
11 in general agreement with Staff's proposal. However,
12 I think --

13 JUDGE JONES: Let's stay away from your
14 reasons. This is to see if you have any proposal of
15 your own, and then we will get to the part about any
16 comments on anybody else's proposal.

17 MR. HELMHOLZ: I am in general agreement with
18 Staff's proposal, but I don't recall if Ms. Von
19 Qualen was proposing hard dates for hearings.

20 JUDGE JONES: I see. Thank you.

21 MR. PLIURA: Your Honor, this is Tom Pliura.

22 JUDGE JONES: Yes, sir.

1 MR. PLIURA: I apologize. I don't seem to have
2 my Easter calendar on my computer here. Does anyone
3 know when Easter is this year?

4 MR. AMBROSE: Easter Sunday is March 23.

5 MR. PLIURA: March 23, okay. Thank you.

6 JUDGE JONES: Let me -- we will get back to
7 Intervenor in a second. Let me back up a minute.
8 Mr. Helmholtz raised a question about the workings of
9 the Staff schedule. The Staff schedule does not at
10 this time have hearing dates recommended, is that
11 correct?

12 MS. VON QUALEN: That is correct, Judge.

13 JUDGE JONES: Okay, thank you. All right.
14 Turning to Intervenor on the phone, do any of you
15 have any competing scheduling proposals to offer at
16 this time?

17 MR. TURNER: Your Honor, this is Mercer Turner.
18 If it would please the Court and counsel present, I
19 am in general agreement with the proposed time
20 schedule expressed by Counsel Von Qualen. I believe
21 she said the week of March 31 and either the first or
22 the second as the filing date. I would concur in

1 April 2 which is a Wednesday.

2 JUDGE JONES: Okay. Thank you, Mr. Turner. Do
3 any of the other Intervenors on the phone have any
4 scheduling proposals to propose at this time?

5 MR. PLIURA: This is Tom Pliura for Pliura
6 Intervenors. I would join in the recommendation of
7 the Staff and Ms. Von Qualen for late March 31 or
8 early April.

9 MR. RUUD: This is Eric Ruud and I concur with
10 that suggestion as well.

11 MR. ROBINSON: Jon Robinson, concur.

12 MR. HOLSTINE: Andy Holstine. I would concur
13 with the Staff representation as well.

14 JUDGE JONES: I am sorry, who was that?

15 MR. HOSTINE: Andy Holstine.

16 JUDGE JONES: Thank you. Any others on the
17 phone? Okay. Let the record show no further
18 comments, at least at this time.

19 A number of parties have indicated
20 they concur in the Staff schedule, so let me first
21 see if any of those have any additional comments with
22 regard to that concurrence and then we will turn to

1 counsel for Enbridge to hear their views.

2 A number of parties located -- whose
3 counsel is located today at least in Springfield or
4 are participating by phone have indicated at least
5 some general concurrence in the Staff proposal. Do
6 any of those parties have any additional comments to
7 make at this time before we turn to Enbridge for its
8 comments? All right. Let the record show no
9 response.

10 Let's turn back to Enbridge. Counsel,
11 does counsel for Enbridge have any response to the
12 Staff schedule or any comments in support of the
13 Enbridge schedule?

14 MR. AMBROSE: Thank you, Your Honor. Gerald
15 Ambrose, of course, speaking for Enbridge.

16 My first comment is why should they
17 have another round at all. The process that we
18 discussed back in October was we would file our
19 testimony, which we did. Everybody would have a
20 chance to file their testimony. We would have a
21 chance to file rebuttal testimony. We would then go
22 to hearings. That is the premise on which we have

1 been operating.

2 Beyond that, in the normal process we
3 generally do these proceedings in my experience with
4 just that. The petitioner or applicant opens, other
5 people file, petitioner or applicant responds or
6 rebutts and then we go to hearing. So I do not
7 understand the proposal for another round of
8 testimony by Staff or Intervenors.

9 Secondly, obviously we have a
10 difference of view of the time to be allotted to
11 this. We have an interest in moving this along. If
12 we continue this on the schedule that Staff has
13 proposed, this matter will be unnecessarily drug out.
14 We filed this application in August of last year.
15 It's been out there for a long time. Our testimony
16 has been available since early October of last year.
17 I believe that any matters that have come up since
18 then we can address, and if anything needs to be
19 explored about them further, that's one of the
20 purposes we use the hearings for.

21 JUDGE JONES: All right. Thank you, Mr.
22 Ambrose. Do other parties have any reply to that?

1 MR. TURNER: Well, Your Honor, this is Mercer
2 Turner, may I reply over the telephone?

3 JUDGE JONES: Sure, go ahead.

4 MR. TURNER: This matter is proceeding at a
5 rate faster than the uncontested proceeding of
6 Enbridge for its certificate application from the
7 Wisconsin border to Pontiac, Illinois. This
8 certainly isn't being delayed unduly, unnecessarily
9 or unfairly. I believe the Staff and the Intervenors
10 are interested in simply having a fair hearing and
11 uncovering the pertinent facts which are relevant to
12 the issue of whether a certificate should issue, and
13 having a rush to judgment here is unnecessary.

14 Enbridge has, indeed, been planning
15 this for many, many years, and it could have filed
16 its application many months ago, before it did. So I
17 believe we are proceeding along in an orderly
18 fashion, and I believe, Your Honor, as the
19 administrative law judge you have done a fair job of
20 expediting things at the request of Enbridge. As you
21 recall, I wanted at our last scheduling conference a
22 considerably longer period of time to conduct

1 discovery and to make preparations fact-finding for
2 this case because it is of such consequence. This is
3 a leading, perhaps the most important case of this
4 nature in the history of the state of Illinois, and
5 it certainly should not be handled as though it were
6 a small claims case or a case in which we do not
7 have, you know, adequate time. There is no
8 compelling reason to establish a schedule sooner than
9 that proposed by Staff.

10 JUDGE JONES: Thank you, Mr. Turner. Just one
11 quick comment there. I would remind Mr. Turner and
12 the other parties, if you will refer back to the
13 record, you will see that the schedule that was
14 adopted most recently, that included today's hearing
15 date, was patterned after the schedule proposed by
16 the ICC Commission Staff.

17 All right. Do other parties have any
18 comments in response to Mr. Ambrose? Mr. Helmholtz.

19 MR. HELMHOLZ: Your Honor, thank you, Judge
20 Jones. Shelby Coal Holdings and our two affiliates
21 learned for the first time yesterday and actually in
22 secondhand fashion when we saw some Enbridge

1 responses to Staff data requests, those contained an
2 atomic bomb from our perspective that indicates
3 Enbridge anticipates a Texas extension from Patoka
4 which raises the specter that Enbridge will soon or
5 shortly file another certificate application to
6 traverse from Patoka southwest. The Shelby parties
7 would like time to analyze and digest this
8 development.

9 We are contemplating, I will tell you
10 now, we are contemplating a motion to strike the
11 pending application on the grounds that this dramatic
12 shift totally changes direction from all the
13 testimony Enbridge has filed, and we are not desirous
14 of being whipped around with a second proceeding. So
15 we may file a motion to strike and/or a motion to
16 stay this proceeding until the ensuing application is
17 filed, and then we would seek joinder to proceeding
18 so we don't all waste our time in evidence in this
19 docket, only to have it pop up the day after its
20 closing.

21 JUDGE JONES: Okay. Thank you, Mr. Helmholz.
22 You heard from Mr. Turner and Mr. Helmholz in

1 response to Mr. Ambrose. Do Staff counsel or any
2 other Intervenor counsel have any response to
3 Mr. Ambrose?

4 MR. PLIURA: Yes, Your Honor, this is Tom
5 Pliura. I would like to comment. Respectfully, I
6 think the Court issued an order after some
7 negotiation regarding the protected materials, and I
8 think we signed almost immediately after we received
9 the final draft of the confidential -- of the
10 requirements for the confidentiality document. We
11 received last week, I think -- I didn't bother to
12 count how long, but it is several thousand pages of
13 materials, a lot of financial data that we had
14 requested and actually received, we saw for the first
15 time. One of our experts, the economist, Shawn
16 Durkin, was actually at a scheduled trip to Hawaii
17 and he was even out of the country so he hadn't even
18 had a chance to look at this material yet.

19 But all that being said, we certainly
20 don't think that the Staff's recommendation or time
21 frame is unreasonable, considering we now have
22 several thousand more pages of documents to go

1 through. All that being said, I am not at all
2 familiar with how this process normally works, but it
3 doesn't seem like -- we have about 250 plus
4 intervenors in this matter and, you know, to comment
5 on why we are moving it along so quickly, I think
6 there is great interest in this particular project by
7 a lot of different people, and I think it is
8 reasonable to follow the Staff's recommendation.

9 JUDGE JONES: Okay, thank you. Ms. Von Qualen?

10 MS. VON QUALEN: Thank you, Judge. Yes, Staff
11 is sympathetic with the Company's desire to complete
12 this proceeding. However, this proceeding is
13 becoming, it seems, more and more complex as we go
14 along. And Staff is interested that the Commission
15 would have a full and complete record. As
16 Mr. Helmholtz mentioned, the Company has now indicated
17 in a press release that there is going to be an
18 extension to this particular pipeline. And as
19 indicated by Mr. Maple's testimony, that has put
20 Staff in a position where some of the evidence that
21 was previously provided appears that it may no longer
22 be relevant or at least perhaps some of the rationale

1 and reasons behind the testimony are going to be
2 changed.

3 Staff believes they will have a need
4 for at least two additional rounds of data requests
5 based upon just the Company's position on this issue.
6 In addition, as was indicated earlier, Staff's
7 request for the late March, early April date is so
8 that Staff may also review the Intervenors'
9 testimony, and there was a substantial amount of
10 testimony that was filed yesterday. Clearly, Staff
11 could not at this time opine as to what, if anything,
12 Staff would do about that testimony or whether data
13 requests would need to be sent, but it appears that
14 there is a strong likelihood of that.

15 So that Staff believes it would be
16 reasonable to give a substantial period of time for
17 the parties to continue with discovery, and that the
18 interest in the public of having the record be full
19 and complete and the Commission make a knowledgeable
20 decision in this matter outweighs the Company's
21 desire to have an order entered as quickly as
22 possible.

1 JUDGE JONES: Thank you. Are there other
2 counsel for Intervenor who have not already offered
3 responses who would like to provide responses to
4 Mr. Ambrose at this time? Let the record show no
5 response.

6 We have heard from Staff counsel and
7 counsel for several of the Intervenor with respect
8 to the scheduling proposals, and we have heard their
9 responses to Mr. Ambrose's arguments. Mr. Ambrose,
10 do you have any reply?

11 MR. AMBROSE: Yes, Your Honor, thank you.
12 Gerald Ambrose, of course, speaking for Enbridge
13 again. Several comments. I would make the point, as
14 my partner Mr. Reed always reminds me, that a full
15 blown rate case before this Commission only takes
16 eleven months. If we follow this pattern that's
17 being proposed, this proceeding is quite likely to
18 take a lot more than eleven months.

19 Secondly, the point by Shelby Coal
20 counsel about a so-called, quote, atomic bomb,
21 unquote, it is interesting in view of the fact that
22 in our original application it was stated that a

1 possible project from Patoka south was under
2 consideration and was a possibility. All we have
3 said in the recent press release is that that
4 possibility is being explored further. There is no
5 definite decision that the line would be built.
6 There is no definite decision that another
7 application would be filed even if a decision to
8 build the line is made. Consequently, that is just
9 the most abject speculation, offered for no valid
10 purpose that I can see.

11 Mr. Pliura wanted to comment about the
12 financial information. It was provided to him once
13 he agreed to abide by the order that was entered by
14 yourself pursuant to our motion for a protective
15 order. It was provided by Federal Express service.
16 He had it the next day. Mr. Durkin filed the
17 testimony that he filed with no indication therein
18 that he has any interest or qualifications to speak
19 to the financial conditions of Enbridge.
20 Consequently, I don't find that very persuasive.

21 And as I said a moment ago, and I
22 don't want to argue with Ms. Von Qualen very much,

1 but it is not at all clear or not known that there
2 will be another line or that there will be another
3 application. I think we can clarify this matter for
4 everybody very quickly, and we should proceed with
5 the application that is pending before this
6 Commission, not the other people's interpretations of
7 things that they are merely speculating about.

8 JUDGE JONES: Thank you, Mr. Ambrose. One
9 final opportunity to others. Does anybody have any
10 sur sur-reply to that? I am sorry, any sur reply to
11 Mr. Ambrose? Let the record show they do not.

12 All right. With respect to further
13 scheduling, check my notes very quickly here. I
14 guess one clarifying question of sorts, the Staff
15 schedule supported by several of the Intervenors made
16 reference to a Company surrebuttal stage. Let me
17 just ask a quick question. In the event something
18 like the Staff schedule is adopted, at least in terms
19 of the number of steps that it contains, putting
20 aside the dates, would Enbridge be wanting an
21 opportunity to file surrebuttal to any filing made by
22 Staff and Intervenors in response to each other and

1 in response to Enbridge rebuttal?

2 MR. AMBROSE: I believe due process would
3 require that we be given that opportunity, Your
4 Honor, and we certainly would want that opportunity
5 in those circumstances.

6 JUDGE JONES: Thank you. All right. Thank you
7 to the parties for your scheduling proposals and also
8 your input today with respect to the scheduling
9 issues. A ruling will be issued within a couple days
10 with respect to further scheduling to be implemented
11 in this matter. It will be served electronically on
12 the parties and it will definitely be this week.

13 One or two other quick notes, I think
14 Mr. Granahan had mentioned the motion that he filed
15 on behalf of the Environment Illinois Research and
16 Education Center. I would just note that for the
17 parties' information that a scheduling notice is
18 being served today containing a response and reply
19 opportunity with respect to that motion.

20 MR. AMBROSE: Excuse me. Could I be reminded
21 what that motion was? It just slipped my mind.

22 JUDGE JONES: I am not going to characterize

1 the motion or describe it, but if it is of help to
2 counsel and other counsel, wherever you may be,
3 referring to the motion with a docket entry of
4 January 7, 2008, and the docket sheet entry refers to
5 it as Intervenor Environment Illinois Research and
6 Education Center's Motion to Join In and Adopt
7 Intervenor's Motion to Compel.

8 MR. AMBROSE: Thank you. I appreciate the
9 clarification, the reminder.

10 JUDGE JONES: Not a problem. Is that correct,
11 Mr. Granahan?

12 MR. GRANAHAN: Yes, that's correct.

13 MR. REED: Your Honor, this is Darryl Reed. I
14 might note, without addressing the merits of the
15 motion, that part of the motion filed by the
16 Intervenor Environment Illinois Research and
17 Education Center was addressed in a ruling that you
18 entered on the 28th of December. Thank you.

19 JUDGE JONES: All right. Do the parties have
20 anything else today before we conclude today's status
21 hearing? Mr. Ambrose?

22 MR. AMBROSE: Yes, Your Honor, thank you.

1 Gerald Ambrose again. If I just may inquire, we are
2 still receiving testimony this morning. Is there any
3 other testimony that anybody else knows that they are
4 going to be sendin us today or tomorrow or any time
5 soon? I would just like a couple of little
6 administrative clarifications here.

7 MR. PLIURA: That brings up a -- Your Honor,
8 this is Tom Pliura. We don't have any more to file
9 at this point in time. It is my understanding that
10 several of the attorneys involved attempted to file
11 materials on the ICC website and for whatever reason
12 they were not able to do so. We have had some
13 difficulty when we try to file large documents
14 electronically, and I know we filed it in the last
15 half hour there before five o'clock a substantial
16 amount of megabytes, whatever that is. And I don't
17 know if anybody else has any comments, but I do
18 believe we might have taken up some space on there,
19 and I am not sure what can be done about that or if
20 anything. I would offer that as a comment.

21 JUDGE JONES: Thank you. Let me just, given
22 the line of discussion here, let me just ask a

1 question of the parties. Does any party have any
2 objection to anything that has been filed to date
3 purporting to be Staff and Intervenor testimony being
4 deemed timely filed? Does anybody have any objection
5 to that?

6 MR. AMBROSE: Your Honor, Gerald Ambrose again,
7 I don't believe that some of those things were
8 delivered to us before five o'clock on January 7 in
9 accordance with your scheduling order. But, you
10 know, I am not going to make a big deal out of it.
11 If I can just get it ASAP, that's fine.

12 JUDGE JONES: Let's back up a minute then. The
13 question has been raised as to whether there is still
14 any testimony still out there that has not yet been
15 filed on e-Docket or served on other parties as part
16 of the Staff and Intervenor testimony filing due
17 yesterday. The question that was raised was whether
18 there is still any testimony still out there that has
19 not yet been filed or served. It is my understanding
20 that when that question was raised there was no
21 indication that there was anything else yet to file
22 with respect to the Staff and Intervenor filing due

1 yesterday. But let's make sure.

2 Is anyone still attempting to file and
3 serve Staff or Intervenor direct testimony that was
4 due yesterday?

5 MR. PLIURA: Your Honor, again this is Tom
6 Pliura. I wanted to clarify. Obviously, we have the
7 pending motions to compel, and it sounds like the
8 Court is going to issue an opinion. Whatever -- we
9 assume or maybe it's a wrong assumption that if there
10 are materials that we receive, if the motion goes in
11 favor of us, we assume that we may have a right to
12 respond to any material that we didn't receive. That
13 may be an incorrect assumption on my part, but we
14 have done everything we could with the information
15 that we had.

16 JUDGE JONES: There is rulings out there right
17 now and there will be further rulings with respect to
18 those pending motions, and I am not going to go into
19 any more detail with respect to those today. Those
20 rulings may or may not involve some opportunity for
21 the filing of some supplemental testimony.

22 But let's put aside the question of

1 supplemental testimony for purposes of this portion
2 of the discussion. The question that was raised was
3 whether there was still some testimony parties were
4 trying to file yesterday and didn't get filed until
5 today. The question was whether there is still any
6 testimony that has not yet been filed or served in
7 that category. Is there?

8 MR. TURNER: This is Mercer Turner. If it
9 would please Your Honor and counsel, Mr. Ambrose
10 especially, we did confirm with the ICC division that
11 accepts the filings that all of our testimony, all
12 the testimony that I filed, was received by five p.m.
13 Now, in terms of sending it to other parties, let me
14 kind of explain something that has been mentioned in
15 earlier telephone conferences, at earlier
16 conferences, by Dr. Pliura today, everyone seems to
17 have a different size portal. And, you know, my
18 staff spent the entire day e-mailing yesterday.

19 JUDGE JONES: I am sorry to interrupt you, but
20 what I am really trying to figure out is whether it
21 is all on file.

22 MR. TURNER: It is as far as we know.

1 JUDGE JONES: We will leave it at that. I am
2 sorry, we are not going to spend any more time on
3 that right now. I'm just trying to step in and help
4 out the parties there with respect to that. If it
5 were all on file and served, then the effort I was
6 making was to see whether there was going to be any
7 objections to it as being late filed. And if there
8 were none, then anything that slipped in today for
9 those kind of reasons would be deemed timely filed.
10 However, those efforts, probably 15 minutes into that
11 discussion, really haven't achieved that for us.

12 So I am going to leave it at that. If
13 there is any issues with respect to whether those
14 filings were timely made, parties can do whatever you
15 think is appropriate in terms of motions, and we will
16 deal with them just like we do any other motion. And
17 to the extent something else needs to be done with
18 respect to that, well, we will do it.

19 Do the parties have anything else?
20 Okay. Let the record show they do not. At this time
21 then let the record show that today's status hearing
22 is over. Again, our thanks to the parties for your

1 participation. Also thanks to the law offices of
2 Thomas Pliura for setting up the call-in number for
3 us today.

4 The next hearing date I will not
5 specify right now because that's going to depend on
6 what happens with reference to these competing
7 scheduling proposals. So at this time I will simply
8 say that the hearing is concluded and the matter is
9 continued to a date to be specified in an upcoming
10 notice. Thank you, all. Have a good afternoon.

11 (Whereupon the hearing in this
12 matter was continued until a
13 later date in Springfield,
14 Illinois.)

15
16
17
18
19
20
21
22